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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/975,756      | 10/10/2001  | Yelena Loginova      | 967.061US1          | 2366             |

21186 7590 05/27/2004

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EXAMINER

SHARAREH, SHAHNAM J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1617

DATE MAILED: 05/27/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/975,756

Applicant(s)

LOGINOVA ET AL.

Examiner

Shahnam Sharareh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### **DETAILED ACTION**

Amendment filed on July 28, 2003 has been entered. Any rejection that is not addressed in this Office Action is considered obviated in view of the Amendments. Claims 1-12, 14-26 are under consideration.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12, 14-26 stand rejected under 35 U.S.C. 102(e) as being anticipated by Karlen et al US Patent 6,190,647.

Applicant's arguments have been fully considered but are not found persuasive. Applicant argues that the cited patent does not have the element of ingredients having concentrations that are a pre-selected fraction of concentration of the aliphatic hydrocarbon solvent.

In response, Examiner first states that such limitation does not affirmatively limit the instant claim 1 because the ingredient is an optional limitation depending on the existence of volatile silicone derivatives. Since volatile silicone derivatives are optional, then the presence of ingredients are also optional. Further, claim 2 does not contain such limitation.

In the alternative, even if the recitation of ingredients would have been an affirmative limitation, it encompasses the use of any suitable agent. Here, the cited patent teaches inclusion of such ingredients as perfume oils, wetting agents, antioxidants, or preservatives in fraction amounts of at least 0.01

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percent. (see col 5, lines 45-60). Thus, Karlen still meets all limitations of the instant claims.

***Claim Rejections - 35 USC § 103***

Claims 1-12, 14-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Samain et al US Patent 6,524,596 in view of Karlen US Patent 6,190,647.

Applicant's arguments have been fully considered but are not persuasive because Karlen teaches the use of suitable ingredients in his compositions as argued above. Therefore all limitations of the instant claims are taught and the rejection is proper for the reasons of record.

Samain teaches the use of methacrylic acid/acrylic acid/ethyl acrylate/methacrylate copolymers such as Amerhold DR 25, a silicone oil, and hydrocarbon solvents such as isoparaffins, dodecane or mixtures thereof (see abstract, col 2, lines 16-25; col 4, lines 42-66 col 6, line 40). The formulation of Samain can be in gel form (col 8, lines 26-30). Samain also teaches the use of surfactant as needed (col 5, lines 5-7). Samain does not teach the use of non-ionic surfactants in his compositions.

Karlen teaches the use of non-ionic surfactants in cosmetic gels in amounts of at least 0.25% (col 2, lines 24-50, 63-67, examples 4-7) with acrylate derivative film forming agents.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the gel formulations of Samain to contain a non-ionic surfactant of choice such as a steareth or a cetareth, because the ordinary

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skill in the art would have had a reasonable expectation of success in providing a more stable topical gel formulation.

### ***Double Patenting***

Claims 1-12, 14-26 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,523,565.

Applicant's intention to file a terminal disclaimer is noted.

### ***Conclusion***

No claims are allowed. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone

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number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 703-308-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

  
**RUSSELL TRAVERS**  
**PRIMARY EXAMINER**